

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

GOVERNMENT COMPETITION AND PRIVATIZATION ACT

LONG TITLE

General Description:

This bill repeals the existing Privatization Policy Board and enacts the Government Competition and Privatization Act, including creating the Government Competition and Privatization Commission.

This bill:

- ▶ repeals provisions related to the Privatization Policy Board;
- ▶ defines terms;
- ▶ creates the Government Competition and Privatization Commission;
- ▶ establishes the duties of the commission, including rulemaking;
- ▶ imposes requirements for when a government entity may compete with a private enterprise;
- ▶ addresses issues specific to an institution of higher education;
- ▶ imposes requirements for review of privatization; and
- ▶ provides for enforcement including:
 - exempting administrative actions from the Administrative Procedures Act;
 - providing a complaint process;
 - providing for injunctions; and
 - providing for enforcement.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2008.

This bill coordinates with X, to provide for technical renumbering.

List of sections affected:

ENACTS:

63-55d-101

63-55d-102

63-55d-201

63-55d-202

63-55d-203

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34 63-55d-301

35 63-55d-302

36 63-55d-303

37 63-55d-401

38 63-55d-402

39 63-55d-501

40 63-55d-502

41 63-55d-503

42 63-55d-504

43 63-55d-505

44

45 REPEALS:

46 63-55a-1

47 63-55a-2

48 63-55a-3

49

50 Statutory text:

51

52 Section 1. Section 63-55d-101 is enacted to read:

53 **CHAPTER 55d. GOVERNMENT COMPETITION AND PRIVATIZATION ACT**

54 **Part 1. General Provisions**

55 **63-55d-101. Title.**

56 This chapter is known as the "Government Competition and Privatization Act."

57

58 Section 2. Section 63-55d-102 is enacted to read:

59 **63-55d-102. Definitions.**

60 As used in this chapter:

61 (1)(a) "Activity" means to:

62 (i) perform a service; or

63 (ii) provide a good.

64 (b) "Activity" includes to:

65 (i) manufacture a good or service;

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- 66 (ii) process a good or service;
- 67 (iii) sell a good or service;
- 68 (iv) offer for sale a good or service;
- 69 (v) rent a good or service;
- 70 (vi) lease a good or service;
- 71 (vii) deliver a good or service;
- 72 (viii) distribute a good or service: or
- 73 (ix) advertise a good or service.
- 74 (2) "By-product of a commercial activity" is as defined by the commission by rule made in
- 75 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- 76 (3) "Commercial activity" means to engage in an activity that can be obtained in whole or in part
- 77 from a private enterprise.
- 78 (4) "Commission" means the Government Competition and Privatization Commission created in
- 79 Section 63-55d-201.
- 80 (5) "Commission accounting method" means one or more accounting rules made by the
- 81 commission in accordance with:
- 82 (a) Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and
- 83 (b) Section 63-55d-203.
- 84 (6) "Competitive impact statement" means a statement that complies with Section 63-55d-302.
- 85 (7) "Department" means the Department of Administrative Services.
- 86 (8) "Faculty member" means a person treated as a faculty member by an institution of higher
- 87 education for a purposes other than this chapter.
- 88 (9) "Government entity" means:
- 89 (a) the state;
- 90 (b) a political subdivision of the state, including a:
- 91 (i) county;
- 92 (ii) city;
- 93 (iii) town;
- 94 (iv) local school district;
- 95 (v) local district; or
- 96 (vi) special service district;
- 97 (c) an institution of higher education, as defined in Section 53B-3-102;

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98 (d) an agency of an entity described in this Subsection (9), including a department, office, division,
99 authority, commission, or board; and

100 (e) an entity created by an interlocal cooperative agreement under Title 11, Chapter 13, Interlocal
101 Cooperation Act, between two or more entities described in this Subsection (9).

102 (10) "Invited guest" means a person who enters onto a campus of an institution of higher
103 education:

104 (a) for an act that is:

105 (i) educational;

106 (ii) related to research; or

107 (iii)(A) normally associated with an institution of higher education; and

108 (B) for a purpose or has a result that does not result in the institution of higher education
109 competing with a private enterprise; and

110 (b) not primarily to purchase a good or service not related to an act described in Subsection
111 (10)(a).

112 (11) "Ordinary business channel" is as defined by the commission by rule made in accordance with
113 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

114 (12) "Private enterprise" means a person that for profit:

115 (a) manufactures a good or service;

116 (b) processes a good or service;

117 (c) sales a good or service;

118 (d) offers for sale a good or service;

119 (e) rents a good or service;

120 (f) leases a good or service;

121 (g) delivers a good or service;

122 (h) distributes a good or service: or

123 (i) advertises a good or service.

124 (13) "Privatize" means that an activity engaged in by a government entity is transferred so that a
125 private enterprise engages in the activity including a transfer by:

126 (a) contract;

127 (b) transfer of property; or

128 (c) another arrangement.

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129 (14) "Staff member" means an individual who an institution of higher education treats as staff to
130 the institution of higher education for a purpose other than this chapter.

131 (15) "Student" means an individual who, under rules made by the Board of Regents, is:

132 (a) enrolled or accepted for enrollment at an institution of higher education; and

133 (b) is making suitable progress in the individual's education toward obtaining a degree or other
134 appropriate certification in accordance with standards acceptable to the Board of Regents.

135 (16) "Total actual cost" means the costs incurred, directly or indirectly, when engaging in an
136 activity by the person who engages in the activity.

137

138 Section 3. Section 63-55d-201 is enacted to read:

139 **Part 2. Government Competition and Privatization Commission**

140 **63-55d-201. Government Competition and Privatization Commission created.**

141 (1)(a) There is created in the department the Government Competition and Privatization
142 Commission consisting of seven members appointed by the governor.

143 (b) The governor shall appoint as members of the commission:

144 (i) four individuals:

145 (A) each of whom is an owner or officer of a private enterprise that has a location in the state;

146 (B) one of whom is chosen from at least two names recommended by the speaker of the House of
147 Representatives; and

148 (C) one of whom is chosen from at least two names recommended by the president of the Senate;

149 (ii) one chief administrative officer of a state government entity;

150 (iii) one representative from a political subdivision of the state chosen from at least four names:

151 (A) at least two names being recommended from the League of Cities and Towns; and

152 (B) at least two names being recommended from the Utah Association of Counties; and

153 (iv) one representative who is chosen from at least four names:

154 (A) at least two names being recommended from the State Board of Education; and

155 (B) at least two names being recommended from the Board of Regents.

156 (c) A person described in Subsection (1)(b) as recommending names to the governor shall submit
157 the recommended names to the governor no later than 30 days from the day on which the person
158 receives notice from the governor that the governor is in need of the recommendations.

159 (2) (a) Except as required by Subsection (2)(b), a commission member shall serve until the sooner
160 of:

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- 161 (i) the expiration of a four-year term; or
- 162 (ii) the day on which the commission member no longer holds the position required under
- 163 Subsection (1) to be appointed by the governor.
- 164 (b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to
- 165 ensure that the terms of the commission members are staggered so that approximately half of the
- 166 commission is appointed every two years.
- 167 (c) A commission member shall serve until a successor is appointed.
- 168 (d) When a vacancy occurs in the membership for any reason, the governor shall appoint a
- 169 replacement to the unexpired term in a manner consistent with Subsection (1)(b).
- 170 (3) By no later than July 31 each year the commission shall select one of its members to serve as
- 171 chair of the commission for a one-year term.
- 172 (4) The commission shall meet as scheduled by the chair, except that the chair shall schedule a
- 173 meeting at least quarterly.
- 174 (5)(a) Five members of the commission constitute a quorum of the commission.
- 175 (b) An action of the commission requires that:
- 176 (i) a quorum be present; and
- 177 (ii) a majority of the commission members that are present vote for the action.
- 178 (6) (a) (i) A commission member who is not a government employee may not receive
- 179 compensation or benefits for the commission member's service, but may receive per diem and
- 180 expenses incurred in the performance of the commission member's official duties at the rates
- 181 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 182 (ii) A commission member who is not a government employee may decline to receive per diem
- 183 and expenses for the commission member's service.
- 184 (b) (i) A state government officer or employee commission member who does not receive salary,
- 185 per diem, or expenses from the commission member's agency for the commission member's
- 186 service may receive per diem and expenses incurred in the performance of the commission
- 187 member's official duties from the commission at the rates established by the Division of Finance
- 188 under Sections 63A-3-106 and 63A-3-107.
- 189 (ii) A state government officer or employee commission member may decline to receive per diem
- 190 and expenses for the commission member's service.
- 191 (c) (i) A higher education commission member who does not receive salary, per diem, or
- 192 expenses from the entity that the commission member represents for the commission member's

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193 service may receive per diem and expenses incurred in the performance of the commission
194 member's official duties from the commission at the rates established by the Division of Finance
195 under Sections 63A-3-106 and 63A-3-107.

196 (ii) A higher education commission member may decline to receive per diem and expenses for the
197 commission member's service.

198 (d) (i) A local government commission member who does not receive salary, per diem, or
199 expenses from the entity that the commission member represents for the commission member's
200 service may receive per diem and expenses incurred in the performance of the commission
201 member's official duties at the rates established by the Division of Finance under Sections
202 63A-3-106 and 63A-3-107.

203 (ii) A local government commission member may decline to receive per diem and expenses for
204 the commission member's service.

205 (7) The department shall staff the commission.

206 (8) (a) The commission may appoint one or more advisory groups that may with respect to an
207 issue within the jurisdiction of the commission:

208 (i) conduct a study, research, or analyses; and

209 (ii) make a report, including a recommendation, to the commission.

210 (b) An advisory group shall include at least one member of the commission.

211

212 Section 4. Section 63-55d-202 is enacted to read:

213 **63-55d-202. Commission duties.**

214 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission
215 shall make rules to:

216 (a) define:

217 (i) "byproduct of a commercial activity"; and

218 (ii) "ordinary business channel";

219 (b) establish a commission accounting method in accordance with Section 63-55d-203;

220 (c) establish a procedure for preparing competitive impact statements that is:

221 (i) consistent with Section 63-55d-302; and

222 (ii) provides a process for issuing a request for proposals:

223 (A) to ensure that the request for proposals is distributed widely; and

224 (B) that is consistent with Title 63, Chapter 55, Utah Procurement Act;

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- 225 (d) establish a procedure for an institution of higher education requesting an approval of the
226 commission under Section 63-55d-303;
- 227 (e) establish one or more standards to recommend privatization of an activity of a government
228 entity in accordance with Part 4, Privatization Requirements; and
- 229 (f) establish a procedure for a person to file a complaint that is consistent with Part 5,
230 Enforcement.
- 231 (2) The commission shall comply with Part 3, Government Competition Requirements:
- 232 (a) to review or approve a commercial activity of a government entity; and
- 233 (b) to review or approve a commercial activity of an institutional of higher education, including a
234 charge for the sale of a byproduct of a commercial activity.
- 235 (3) The commission shall comply with Part 4, Privatization Requirements, to review privatization of
236 an activity of a government entity;
- 237 (4) The commission shall comply with Part 5, Enforcement, if a complaint is filed with the
238 commission in accordance with Section 63-55d-502.
- 239 (5) The commission shall communicate with private or public entities that address government
240 competition with a private enterprise or privatization; and
- 241 (6)(a) The commission shall prepare an annual report that:
- 242 (i) describes the commission's activities, including the commission's actions with respect to a
243 complaint filed under Section 63-55d-502; and
- 244 (ii) makes recommendations, including the need for legislation, if any, to address an activity of a
245 government entity that the commission finds:
- 246 (A) is in competition with a private enterprise; or
- 247 (B) should be privatized;
- 248 (b) submit the annual report by no later than December 1 to the Legislature and the governor; and
- 249 (d) if the annual report includes a recommendation described in Subsection(6)(b)(ii) regarding a
250 government entity, file a copy of the recommendation with:
- 251 (i) the chief administrative officer of the government entity that is the subject of the
252 recommendation; and
- 253 (iii) the Office of Legislative Fiscal Analyst, for submission to the legislative appropriation
254 subcommittee that has responsibility related to that government entity.

255

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256 Section 5. Section 63-55d-203 is enacted to read:

257 **63-55d-203. Commission accounting method**

258 The commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
259 Rulemaking Act, shall establish an accounting method that:

260 (1) is similar to generally accepted accounting principles used by a private enterprise;
261 (2) allows a government entity to identify the total actual cost of engaging in a commercial activity
262 in a manner similar to how a private enterprise identifies the total actual cost to the private

263 enterprise, including the following:

264 (a) a labor expense, such as:

265 (i) compensation and benefits;

266 (ii) a cost of training;

267 (iii) a cost of paying overtime;

268 (iv) a cost of supervising labor; or

269 (v) another personnel expense;

270 (b) an operating cost, such as:

271 (i) vehicle maintenance and repair;

272 (ii) a marketing, advertising, or other sales expense;

273 (iii) an office expense;

274 (iv) a cost of an accounting operation, such as billing;

275 (v) an insurance expense;

276 (vi) a real estate or equipment cost;

277 (vii) a debt service cost; or

278 (viii) a proportionate amount of other overhead or of a capital expense, such as vehicle

279 depreciation and depreciation of other fixed assets;

280 (c) a contract management cost; and

281 (d) another cost particular to a person supplying the good or service;

282 (3) provides a process to estimate the taxes a government entity would pay related to engaging in
283 a commercial activity if the government entity were required to pay federal, state, and local taxes
284 to the same extent as a private enterprise engaging in the commercial activity; and

285 (4) allows an institution of higher education to calculate the market price of the sale of a byproduct
286 of a commercial activity as described in Subsection 63-55d-303(4).

287

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288 Section 6. Section 63-55d-301 is enacted to read:

289 **Part 3. Government Competition Requirements**

290 **63-55d-301. Government competition with private enterprise prohibited.**

291 (1) Except as provided in Subsection (2) or (3) or, for purposes of an institution of higher
292 education, except as provided in Section 63-55d-303, a government entity may not engage in a
293 commercial activity:

294 (a) to provide a good or service for:

295 (i) its own use;

296 (ii) the use of another government entity; or

297 (iii) use by the public; and

298 (b) if a good or service with respect to the commercial activity can be obtained from a private
299 enterprise through the use of an ordinary business channel.

300 (2) A government entity may engage in a commercial activity that is not described in
301 Subsection (3) if:

302 (a) the commercial activity is expressly authorized by statute; or

303 (b)(i) the government entity requests approval of the commercial activity before the day on which
304 the government entity engages in the commercial activity; and

305 (ii) the commission finds that:

306 (A) a private enterprise is not able to provide a good or service with respect to the commercial
307 activity;

308 (B) use of a private enterprise causes an unacceptable delay or disruption of an activity that is
309 essential;

310 (C) the commercial activity is inherently related to the defense of the state or the government
311 entity; or

312 (D) the government entity provides the good or service with respect to that commercial activity:

313 (I) to a government entity on a continuing basis; and

314 (II) at an amount included in a competitive impact statement that is less than the cost to the
315 government entity receiving the good or service if the good or service were obtained from a private
316 enterprise as determined relating to the specific good or service; and

317 (III) the good or serve with respect to that commercial activity is of at least equal quality to the
318 good or service that could be obtained from a private enterprise at a reasonably comparable cost
319 to the government entity receiving the good or service.

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320 (3)(a) If a government entity is engaging in a commercial activity on July 1, 2008, the government
321 entity may continue to engage in the commercial activity until June 30, 2009 without complying
322 with Subsection (2).

323 (b) To engage in a commercial activity on or after July 1, 2009, a government entity described in
324 Subsection (3)(a) shall comply with Subsection (2) as if the commercial activity is a new
325 commercial activity.

326

327 Section 7. Section 63-55d-302 is enacted to read:

328 **63-55d-302. Competitive impact statement.**

329 (1)(a) If a government entity seeks approval of the commission to engage in a commercial activity
330 under Subsection 63-55d-301(2)(b)(ii)(D), the government entity shall file with its request for
331 approval a competitive impact statement prepared in accordance with this section.

332 (b) A government entity shall include in a competitive impact statement in writing:

333 (i) the information described in Subsections (2), (3), and (4); and

334 (ii) any other information the commission requires by rule.

335 (2) A government entity shall calculate the sum of the following determined in accordance with the
336 commission accounting method:

337 (a) the total actual cost of the commercial activity to the government entity determined no later
338 than six months before the day on which the government entity files the competitive impact
339 statement with the commission; and

340 (b) the estimate of taxes a government entity would pay related to a commercial activity:

341 (i) if the government entity were required to pay federal, state, and local taxes to the same extent
342 as a private enterprise engaging in the commercial activity; and

343 (ii) determined no later than six months before the day on which the government entity files the
344 competitive impact statement with the commission.

345 (3)(a) No earlier than six months before the day on which a government entity files a competitive
346 impact statement with the commission, the government entity shall obtain at least one bid or
347 proposal for the commercial activity on the basis of a request for proposals for the commercial
348 activity that is issued in accordance with:

349 (i) Title 63, Chapter 55, Utah Procurement Act; and

350 (ii) rules of the commission.

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351 (b) A government entity shall determine a cost figure for a private enterprise engaging in a
352 commercial activity:

353 (i) by using the one or more bids or proposals described in Subsection (3)(a); and

354 (ii) that includes a cost to the government entity to administering a bid or proposal.

355 (4) A government entity shall compare the amounts calculated under Subsection (2) with the cost
356 figure calculated under Subsection (3).

357

358 Section 8. Section 63-55d-303 is enacted to read:

359 **63-55d-303. Institution of higher education.**

360 (1) An institution of higher education is considered to engage in a commercial activity as
361 described Subsection 63-55d-301(1) if it engages in the commercial activity for its own use if it
362 engages in the commercial activity for:

363 (a) a student;

364 (b) a faculty member of the institution of higher education;

365 (c) a staff member of the institution of higher education; or

366 (d) an invited guest of the institution of higher education.

367 (2)(a) In addition to when an institution of higher education is allowed to engage in a commercial
368 activity under Section 63-55d-301, an institution of higher education may engage in a commercial
369 activity if:

370 (i) the institution of higher education requests approval of the commercial activity before the day on
371 which the institution of higher education engages in the commercial activity; and

372 (ii) the commission finds that the commercial activity:

373 (A) is necessary because a student needs to participate in the commercial activity to obtain a
374 degree or other appropriate certification in accordance with standards acceptable to the Board of
375 Regents;

376 (B) is a recognized and integral part of a teaching, educational, or research program that leads to
377 a degree or other appropriate certification in accordance with standards acceptable to the Board of
378 Regents; or

379 (C) consists of on-campus activity, including:

380 (I) food service;

381 (II) student housing;

382 (III) sponsorship of a cultural or athletic event;

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383 (IV) providing a facility for recreation to a student, faculty member, or staff member;
384 (V) selling a course book or course-related supplies; or
385 (VI) selling one or more personal items bearing the institution of higher education's insignia:
386 (Aa) in a limited and reasonable quantity; and
387 (Bb) if the sale is incidental to the sale of a course book or another item permitted in Subsection
388 (2)(a)(b)(ii)(C)(V).

389 (b) An institution of higher education may not engage in a commercial activity through another
390 government entity unless the institution of higher education can directly engage in the commercial
391 activity under this Subsection (2).

392 (c) An institution of higher education may not engage in a commercial activity for another
393 government entity unless:

394 (i) the institution of higher education can engage in the commercial activity under this Subsection
395 (2); and
396 (ii) the other government entity can engage in the commercial activity under Section 63-55d-301.

397 (d)(i) If an institution of higher education is engaging in a commercial activity on July 1, 2008, the
398 institution of higher education may continue to engage in the commercial activity until June 30,
399 2009 without complying with this Subsection (2).

400 (ii) To engage in a commercial activity on or after July 1, 2009, an institution of higher education
401 described in Subsection (2)(d)(i) shall comply with this Subsection (2) as if the commercial activity
402 is a new commercial activity.

403 (3) An institution of higher education may not enter a competitive bidding for an activity unless:

404 (a) the institution of higher education requests approval to enter into competitive bidding for the
405 activity before the day on which the institution of higher education enters the competitive bid; and
406 (b) the commission finds that the activity:

407 (i) is to be performed by one or more students; and
408 (ii) is a recognized and integral part of a teaching, educational, or research program that leads to a
409 degree or other appropriate certification in accordance with standards acceptable to the Board of
410 Regents.

411 (4) An institution of higher education may not dispose by sale of a by-product of a commercial
412 activity notwithstanding whether the commercial activity is a recognized and integral part of
413 teaching, educational, or research program that leads to a degree or other appropriate certification
414 in accordance with standards acceptable to the Board of Regents unless:

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415 (a) the sale is a recognized and integral part of the teaching, educational, or research program; or
416 (b)(i) before the sale of the byproduct, the commission determines that there is no other practical
417 way of disposing of the byproduct; and

418 (ii) the by-product is sold at its market value as determined under the commission accounting
419 method.

420 (5) In determining for purposes of this section whether a commercial activity is a recognized and
421 integral part of a teaching, educational, or research program that leads to a degree or other
422 appropriate certification in accordance with standards acceptable to the Board of Regents, the
423 commission shall consider:

424 (a) whether commercial activity is necessary for:

425 (i) a student to obtain a degree or other appropriate certification in accordance with standards
426 acceptable to the Board of Regents; or

427 (ii) a faculty member or staff member to engage in research or teaching;

428 (b) whether the commercial activity is a specialty good or service not generally available to the
429 public;

430 (c) whether a charge for a good or service related to the commercial activity:

431 (i) is sufficient to pay for the total actual costs to the institution of higher education of engaging in
432 the commercial activity; and

433 (ii) is similar to a charge for that good or service if provided by a private enterprise; and

434 (d) whether the institution of higher education ensures that a commercial activity is:

435 (i) only for:

436 (A) a student;

437 (B) a faculty member;

438 (C) a staff member; or

439 (D) an invited guest; and

440 (ii) not for the general public.

441

442 Section 9. Section 63-55d-401 is enacted to read:

443

Part 4. Privatization Requirements

63-55d-401. Review of privatization

445 (1) Notwithstanding whether a request for approval is filed under Section 63-55d-402 or a

446 complaint is filed under Section 63-55d-502, the commission may review whether or not an activity

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447 of a government entity should be privatized, including determining whether or not if the activity is
448 privatized:

449 (a) at least the same type and quality of service or good would be provided; and

450 (b) the government entity would receive a cost saving.

451 (2) If the commission finds that an activity of a government entity should be privatized, the
452 commission shall comply with Subsection 63-55d-202(6) in completing its annual report.

453

454 Section 10. Section 63-55d-402 is enacted to read:

455 **63-55d-402. Notification of privatization**

456 (1) A government entity shall notify the commission at least 30 days after the day on which a
457 private enterprise begins to engage in the activity that the government entity privatizes.

458 (2) As part of the notice required by this section, a government entity shall describe:

459 (a) the method of privatization;

460 (b) the private enterprise that is engaging in the activity that is privatized;

461 (c) the cost to the government entity's budget of the activity before and after privatization;

462 (d) the manner by which the private enterprise assumes the liability to engage in the activity; and

463 (e) whether or not any change to statute was required to privatize the activity.

464

465 Section 11. Section 63-55d-501 is enacted to read:

466

Part 5. Enforcement

467 **63-55d-501. Exemption from Administrative Procedures Act.**

468 An action taken under this section by the commission is exempt from Title 63, Chapter 46b,

469 Administrative Procedures Act.

470

471 Section 12. Section 63-55d-502 is enacted to read:

472 **63-55d-502. Initial process for a complaint.**

473 (1) (a) A person who believes that a government entity is violating or has violated this chapter may
474 file a written complaint with the commission.

475 (b) The complainant shall state in the written complaint:

476 (i) the violation of the chapter; and

477 (ii) the basis for which the person believes the government entity is violating or has violated this
478 chapter.

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479 (2) After receiving a complaint filed in accordance Subsection (1), the commission shall review the
480 complaint at its next regularly scheduled meeting to determine whether the complaint is made in
481 good faith.

482 (3) If the commission determines that the complaint is made in good faith, the commission shall:
483 (a) notify the following in writing that the government entity is required to respond to the complaint:

484 (i) the complainant; and

485 (ii) the government entity against which the complaint is filed; and

486 (b) require the government entity against which the complaint is filed to respond to the complaint.

487 (4)(a) Upon receipt of the notice described in Subsection (3), a government entity shall respond to
488 the commission in writing within 30 days of the day on which the government entity receives the
489 notice.

490 (b) In the response required by this Subsection (4), the government entity shall:

491 (i) admit or deny that the government entity is or has violated this chapter as stated in the
492 complaint;

493 (ii) state whether or not the government entity will take action to remedy a violation of this chapter
494 as stated in the complaint; and

495 (iii) if the government entity is taking remedial action, the remedial action the government entity is
496 taking.

497 (5)(a) If a government entity admits to a violation of this chapter and states that it will take remedial
498 action in accordance with Subsection (4), the commission may:

499 (i) monitor the remedial action of the government entity;

500 (ii) require additional action to remedy the violation;

501 (iii) impose time periods by which the government entity shall take an action; or

502 (iv) take a combination of Subsection (5)(a)(i) through (iii).

503 (b) If a government entity fails to cooperate with the commission under this Subsection (5), the
504 commission may conduct a hearing in accordance with Section 63-55d-503.

505

506 Section 13. Section 63-55d-503 is enacted to read:

507 **63-55d-503. Hearing – Costs – Termination of commercial activities.**

508 (1)(a) The commission shall hold a hearing on the complaint filed under Section 63-55d-502 if the
509 government entity against which the complaint is filed:

510 (i) denies that it is or has violated this chapter; or

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511 (ii) is determined by the commission to have failed to cooperate as required by Subsection 63-55d-
512 502(5).

513 (b) The commission shall hold a hearing required under this Subsection (1) within 60 days of the
514 day on which:

515 (i) the commission receives the written denial of the complaint; or

516 (ii) the commission determines the government entity fails to cooperate as required by Subsection
517 63-55d-502(5).

518 (c) A hearing conduct under this section is open to the public, unless the commission closes the
519 hearing in accordance with Title 57, Chapter 4, Open and Public Meetings Act.

520 (2) At a hearing conducted under this section, the commission shall provide an opportunity to
521 present evidence to:

522 (a) the complainant; and

523 (b) the government entity against which the complaint is filed.

524 (3)(a) Within 30 days after the hearing, the commission shall:

525 (i) issue an order; and

526 (ii) provide a copy of the order to:

527 (A) the complainant; and

528 (B) the government entity against which the complaint is filed.

529 (b) An order required by this section shall be in writing and state:

530 (i) whether or not the government entity is or has violated this chapter;

531 (ii) what action, if any, the government entity is required to take to remedy a violation of this
532 chapter;

533 (iii) if the complaint is made on the basis of the government entity engaging in a commercial
534 activity, whether or not the government entity is required to stop engaging in the commercial
535 activity;

536 (iv) the time by which a government entity shall take an action required by the order; and

537 (v) any other finding the commission determines is appropriate.

538 (c) The commission may, in an order required by this Subsection (3), require a government entity
539 to privatize a commercial activity that is the basis of the complaint.

540 (4) If the commission determines that a government entity against which a complaint is filed does
541 not or has not violated this chapter, the commission may require the complainant to pay the lesser
542 of:

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543 (a) the costs incurred by the commission in reviewing the complaint and conducting the hearing;
544 and
545 (b) \$1,000.

546 (6) A complainant or government entity may appeal an action by the commission to a district court
547 in the same manner that an informal adjudicative proceeding is appealed under Sections 63-46b-
548 14, 63-46b-15, 63-46b-17, and 63-46b-18.

549

550 Section 14. Section 63-55d-504 is enacted to read:

551 **63-55d-504. Injunction.**

552 (1) If a government entity fails to comply with an order of the commission issued under Section 63-
553 55d-503, the commission may file an action in district court to enjoin the government entity from
554 engaging in a commercial activity that is the basis of a finding by the commission in the order.

555 (2) The attorney general's office shall provide legal support to the commission for an action filed
556 under Subsection (1).

557

558 Section 15. Section 63-55d-505 is enacted to read:

559 **63-55d-505. Monitoring of compliance.**

560 (1) The commission may monitor a government entity's compliance with this chapter in
561 accordance with rules made by the commission.

562 (2) A government entity shall have written procedures implemented by the government entity to
563 monitor its own compliance with this chapter.

564

565 Section 16. **Effective date.**

566 This bill takes effect on July 1, 2008.

567

568 Section 17. **Coordination clause.**

569 Coordinate with legislation recodifying Title 63 to address both internal citations and the numbering
570 of the chapter.

571